

EXHIBIT

5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

v.

Case No.

U.S. DEPARTMENT OF AGRICULTURE,

2:20-cv-0041-

U.S. SMALL BUSINESS ADMINISTRATION,

DCLD-CRW

SECRETARY OF AGRICULTURE, and

ADMINISTRATOR OF THE SMALL BUSINESS

ADMINISTRATION,

Defendants.

VIDEOCONFERENCE DEPOSITION OF

AMY STONEBRAKER

DATE: Wednesday, May 25, 2022

TIME: 9:32 a.m.

LOCATION: Remote Proceeding - DC
Washington, DC 20005

REPORTED BY: Timothy Guevara, Notary Public

JOB NO.: 5242863

<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 62</p> <p>1 a problem. And -- and I don't recall ever receiving a</p> <p>2 complaint in regards to Ultima as -- as the contract</p> <p>3 holder. I recall a situation with a -- with one of</p> <p>4 Ultima's contracted employees in an office and some</p> <p>5 kind of relationship situation that was occurring, and</p> <p>6 it was addressed. So -- but that's really not about</p> <p>7 Ultima itself. So, no, I did not ever receive any</p> <p>8 negative feedback about Ultima.</p> <p>9 Q Did anyone discuss with you the possibility</p> <p>10 of canceling the IDIQ contracts?</p> <p>11 A No. There wouldn't have been a discussion</p> <p>12 to cancel them. Because the contracts had option</p> <p>13 years, there would be a discussion, which I think is</p> <p>14 what this decision memo is -- is based on is the</p> <p>15 decision on whether or not to exercise option periods.</p> <p>16 Q Okay. Did you have any discussions with</p> <p>17 anyone about that?</p> <p>18 A No. So I provided input to the decision</p> <p>19 memo, but the decision was a business decision, which</p> <p>20 would be made by the customer, which would've been</p> <p>21 leadership at that time, because this was for a</p> <p>22 national requirement.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 64</p> <p>1 Q Okay. And when would the current period of</p> <p>2 performance have expired when that decision was made?</p> <p>3 A I would have to look at those contracts to</p> <p>4 see what the award date -- where it began and what the</p> <p>5 periods -- how they ran. I don't recall what the</p> <p>6 base-year and option-year periods start and stop dates</p> <p>7 were.</p> <p>8 Q But that was short shortly after the</p> <p>9 decision memo was written. Correct?</p> <p>10 A Whatever the next -- whatever the next</p> <p>11 option period would have been, the date -- the end</p> <p>12 date would have stopped. I don't know what date that</p> <p>13 is.</p> <p>14 Q Okay. I think you said earlier that there</p> <p>15 were some task orders for which there were option</p> <p>16 years and other task orders, which had no options. Is</p> <p>17 that right?</p> <p>18 A Based on what I recall.</p> <p>19 Q Okay. Did the decision to not renew the</p> <p>20 option on the IDIQ mean that the option on the task</p> <p>21 orders would also not be exercised?</p> <p>22 A I don't -- I don't recall. I believe</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>
<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 63</p> <p>1 Q Okay. And at some point, leadership decided</p> <p>2 not to exercise any options or any remaining options</p> <p>3 on the IDIQ contracts. Is that right?</p> <p>4 A I believe that's what this decision memo</p> <p>5 states.</p> <p>6 Q But at the time, that was your</p> <p>7 understanding?</p> <p>8 A That was my understanding of the memo that</p> <p>9 was signed. Yes.</p> <p>10 Q Okay. Oh, when you saw it, it had been</p> <p>11 signed?</p> <p>12 A I provided data that went into the decision</p> <p>13 memo, and then I saw it once it was signed.</p> <p>14 Q Okay. And was it your understanding that</p> <p>15 that essentially ended the IDIQ contracts?</p> <p>16 A That was the customer notifying us, that</p> <p>17 they did not wish to exercise any remaining options.</p> <p>18 Q And I'm asking you about the practical</p> <p>19 effect of that decision. Is the practical effect of</p> <p>20 that decision is that those IDIQ contracts had ended?</p> <p>21 A If an option is not exercised, then it ends</p> <p>22 when the current period of performance expires.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 65</p> <p>1 that -- well, so for Section -- for Region 2, looking</p> <p>2 at the memo and looking at the balance obligated,</p> <p>3 there would not been a -- the ability to exercise</p> <p>4 options if there were any on any of those awarded</p> <p>5 states, because we were already at about \$9 million.</p> <p>6 As far as the other contracts, I didn't oversee the</p> <p>7 IDIQ for Region 3 and Region 4, so I can't speak to</p> <p>8 whether there were option years on those contracts.</p> <p>9 Q Well, let me follow up on that. There was</p> <p>10 still a million dollars or so left in the Region 2</p> <p>11 IDIQ. Right?</p> <p>12 A Yes.</p> <p>13 Q So it wouldn't have been impossible to</p> <p>14 exercise an option on a Region 2 task order provided</p> <p>15 that the additional money being committed wasn't more</p> <p>16 than a million dollars. Right?</p> <p>17 A True. Yes.</p> <p>18 Q Okay. And I'm trying to understand whether</p> <p>19 the decision not to exercise the options on the IDIQs</p> <p>20 also meant that you would not exercise options on any</p> <p>21 task orders, regardless of whether there was funding</p> <p>22 left for it or not.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>

<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 102</p> <p>1 would -- you wouldn't move money from one contractor</p> <p>2 to another contractor because that contractor's</p> <p>3 contract hit a ceiling. So you have to apply</p> <p>4 that -- that logic across, even when you're dealing</p> <p>5 with the same vendor. And again, it would -- could</p> <p>6 open us up for protests.</p> <p>7 Q Mr. Rosman showed you an email chain in</p> <p>8 which you -- between you and Ms. Bennett in which you</p> <p>9 said something about you were sure there'd be other</p> <p>10 opportunities in the future. Do you recall that?</p> <p>11 A Yes.</p> <p>12 Q And in your understanding, have there been</p> <p>13 other opportunities that Ultima could have potentially</p> <p>14 bid on for admin services for NRCS since the IDIQs.</p> <p>15 A Since I returned --</p> <p>16 MR. ROSMAN: Objection. Go ahead.</p> <p>17 A Since I returned, and in reviewing contracts</p> <p>18 that are now in place in the East, there were</p> <p>19 contracts that were solicited via GSA schedule. So</p> <p>20 there were not -- not all of the admin support awards</p> <p>21 were done as an 8(a) award, where it would've been</p> <p>22 sole sourced and then put into the 8(a) program. So</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 104</p> <p>1 Bennett about why Ultima didn't just apply for GSA</p> <p>2 federal supply schedule?</p> <p>3 A The discussion that she and I had when she</p> <p>4 visited the West Virginia state office, I mentioned</p> <p>5 that, you know, possible avenues for the new</p> <p>6 procurements to happen, whether it be open market,</p> <p>7 FedBizOpps at the time, whether it be GSA schedule, or</p> <p>8 if it would be looked at for the 8(a) program. And</p> <p>9 she indicated she was not on schedule and she was not</p> <p>10 8(a) and that it would be unfair.</p> <p>11 Q Can you just briefly look at Exhibit 2</p> <p>12 again?</p> <p>13 A Yes.</p> <p>14 Q If you can, once you have it open, scroll</p> <p>15 down to the first email in the chain, the email from</p> <p>16 Ms. Bennett to you.</p> <p>17 A Okay.</p> <p>18 Q Okay. If you just look at this, the second</p> <p>19 paragraph where she says, "I strongly object and am</p> <p>20 again" asking "a reconsideration of this decision due</p> <p>21 to the following," and take your time to read these if</p> <p>22 you need to, but what is your response to these</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>
<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 103</p> <p>1 there were other avenues that were used to award</p> <p>2 contracts. I can't speak to the other regions, the</p> <p>3 Central Region or the West Region as they're situated</p> <p>4 now. But I know for the East Region, that I saw a</p> <p>5 mixture of how these were awarded for admin support.</p> <p>6 Q You mentioned the GSA supply schedule, what</p> <p>7 kind of businesses are eligible to obtain contracts</p> <p>8 through that?</p> <p>9 A Any -- any size business can have a GSA</p> <p>10 schedule contract. I don't know the exact process to</p> <p>11 get on to GSA schedule. But I believe that a company</p> <p>12 can submit at any time, and -- and they would have to</p> <p>13 work through GSA to do so. And then they would --</p> <p>14 they would be a contract holder with GSA. And then,</p> <p>15 so it's large business, small business, and use of GSA</p> <p>16 schedule. We don't have that same requirement as we</p> <p>17 do under open market to set aside for small business</p> <p>18 or socioeconomic category when we go out to GSA</p> <p>19 schedule. We're not required to set aside for small</p> <p>20 business, but contracting officers have the ability to</p> <p>21 set aside to small business.</p> <p>22 Q Did you ever have a discussion with Ms.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 105</p> <p>1 objections that she's raising?</p> <p>2 MR. ROSMAN: Objection to form.</p> <p>3 BY MS. GRAY:</p> <p>4 Q Well, let me ask you this. What was your</p> <p>5 response at the time, if you can remember, to these</p> <p>6 objections?</p> <p>7 MR. ROSMAN: Well, I'll still object to</p> <p>8 form.</p> <p>9 A So my response is that we determined for</p> <p>10 this specific requirement, which I believe this</p> <p>11 relates to the Mississippi action -- yeah -- "Subject</p> <p>12 Mississippi contract status." I notified her that the</p> <p>13 determination was made to use 8(a) for that</p> <p>14 requirement, which we had authority to do so under FAR</p> <p>15 Part 19, which talks about set-aside.</p> <p>16 We look at new actions that have to be</p> <p>17 awarded as that, as a new action. So we don't take</p> <p>18 the incumbent -- the fact that she was doing a great</p> <p>19 job, we don't disagree with. We feel that she</p> <p>20 performed the terms of the contract in accordance with</p> <p>21 the contract, and that the decision lies with the</p> <p>22 contracting officer.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>

<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 106</p> <p>1 So while, yes, she is the incumbent, the</p> <p>2 incumbent is not guaranteed the follow-on work. And</p> <p>3 that new -- that new action that has to be looked at</p> <p>4 and then put into place, is looked at separately,</p> <p>5 moving forward and evaluated for that requirement at</p> <p>6 that time.</p> <p>7 Q Is the incumbent give any kind of preference</p> <p>8 in considering the NAICS contract or fulfilling the</p> <p>9 new requirement?</p> <p>10 A If she would be eligible for -- well, the</p> <p>11 Mississippi one, it was just determined that 8(a) was</p> <p>12 the path forward. But for other requirements of the</p> <p>13 same type of administrative support for another state,</p> <p>14 depending on the path that it was solicited, if she</p> <p>15 was eligible to submit an offer, then she would've</p> <p>16 been evaluated based on the evaluation criteria that</p> <p>17 would've been established in the solicitation at that</p> <p>18 time. And those evaluations are performed based on</p> <p>19 what is in that technical submission for this</p> <p>20 requirement.</p> <p>21 And they do look at past performance, but</p> <p>22 they don't look at -- they can't take what they know</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 108</p> <p>1 anything to do with the 8(a) program?</p> <p>2 A No.</p> <p>3 Q What type of work were the IDIQs intended to</p> <p>4 fill?</p> <p>5 A If I recall, it was administrative support</p> <p>6 services and it would've been all of the</p> <p>7 administrative labor categories as defined by the</p> <p>8 Service Contract Act. They have a directory of labor</p> <p>9 categories. It was -- mostly clerical or intended to</p> <p>10 be clerical administrative-type work.</p> <p>11 Q And in your understanding, did that turn out</p> <p>12 to fulfill the needs of all the NRCS offices?</p> <p>13 A Once the test orders were in place, we were</p> <p>14 seeing situations where states were utilizing the</p> <p>15 administrative clerical support for other than</p> <p>16 administrative and clerical duties, having them</p> <p>17 participate or assist with field work and sending them</p> <p>18 out on -- on field work activities. One state in</p> <p>19 particular, Arkansas, was doing that, and we had to</p> <p>20 notify the state that they could not allow those admin</p> <p>21 support individuals to go out into the field and</p> <p>22 assist with any field work, because that wasn't in the</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>
<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 107</p> <p>1 right now when they're evaluating a technical proposal</p> <p>2 as part of a submission. They have to read, what did</p> <p>3 our solicitation say? What were the evaluation</p> <p>4 criteria that would be used? And did the technical</p> <p>5 submission meet the criteria as stated in the</p> <p>6 solicitation? And that is applied across the board to</p> <p>7 any offer that's received. We can't -- we can't take</p> <p>8 what we know of the incumbent and -- and automatically</p> <p>9 score them higher just because we know they're already</p> <p>10 performing the work, if their technical response would</p> <p>11 reflect the work that they're doing in response.</p> <p>12 Q Did the decision not to issue any more task</p> <p>13 orders against the IDIQs have anything to do with</p> <p>14 Ultima?</p> <p>15 A No. It was a business decision based on the</p> <p>16 leadership, whatever they decided, in order to issue</p> <p>17 that decision memo.</p> <p>18 MR. ROSMAN: I'm going to object to the</p> <p>19 question on foundation grounds. Go ahead.</p> <p>20 BY MS. GRAY:</p> <p>21 Q To your knowledge, did the decision not to</p> <p>22 issue anymore task orders against the IDIQs have</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 109</p> <p>1 general scope of the IDIQ.</p> <p>2 Q So in your understanding, did any of the new</p> <p>3 requirements that came up after the IDIQs have</p> <p>4 additional type of work in them beyond administrative</p> <p>5 services?</p> <p>6 MR. ROSMAN: Objection to form.</p> <p>7 A Every state requirement --</p> <p>8 Q Go ahead and answer.</p> <p>9 A Okay. Every state requirement seems to be</p> <p>10 different in the duties that they request or need</p> <p>11 these individuals to perform. You know, it's anywhere</p> <p>12 from typical receptionist-type duties to clerical-type</p> <p>13 duties, but we also saw that some states required use</p> <p>14 of a more, if educated is the right term, but a more</p> <p>15 professional-level position, like management analyst,</p> <p>16 program analyst, someone that would have more</p> <p>17 technical experience or more educational experience to</p> <p>18 fulfill, that the admin support contract didn't cover.</p> <p>19 Q Did you ever use the 8(a) program in order</p> <p>20 to meet an SDB goal?</p> <p>21 A I have never used an 8(a) program to meet an</p> <p>22 SDB goal.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>

1 Ultima Services Corporation v. US Department Of Agriculture Et
 2 Amy Stonebraker (#5242863)

3 E R R A T A S H E E T

4 PAGE 11 LINE 7 CHANGE _____

5 From: 9 or and 11 To: 9 or an 11

6 REASON typo

7 PAGE 30 LINE 7 CHANGE _____

8 From: beyond 9/30 of 2018 To: 9/30 of 2019

9 REASON misstated ending year in discussion on 2 yr funds

10 PAGE 33 LINE 22 CHANGE _____

11 From: past selected To: path selected

12 REASON misheard word used

13 PAGE 35 LINE 8 CHANGE _____

14 From: Let read that To: Let me read that

15 REASON word left out of statement

16 PAGE 61 LINE 17 CHANGE _____

17 From: NRC To: NRCS

18 REASON Wrong typed acronym

19 PAGE 84 LINE 21 CHANGE _____

20 From: 5611100 To: 561110

21 REASON NAICS code incorrectly typed

22 Page 86 Line 11 CHANGE- From: Temporary health services

To: Temporary help services

23 REASON Incorrect word typed in statement

24 Page 108 Line 13 CHANGE From: once the test orders

To: once the task orders

25 Reason Incorrect word typed

Amy Stonebraker